

A Shelter guide

Mortgage Arrears

How to cope with
mortgage arrears

Shelter



Mortgage arrears

This guide provides information on how best to cope with mortgage arrears. It will help anyone who has a mortgage on their house or flat, but is not designed to cover business loans or business premises.

The law is complex and if you do the wrong thing you could lose your home. The guide only offers an introduction to the law in England and Wales. If you need more detailed information, you should get advice from a Housing Aid Centre or a Citizens Advice Bureau, contact Shelter's free housing advice helpline on 0808 800 4444 (open seven days a week from 8am to midnight; charges apply to mobile phone calls) or visit www.shelter.org.uk/adviceonline

Alternatively, contact one of the other organisations listed at the back of this guide on pages 21-22. If you live in Scotland or Northern Ireland the law is different and you should contact Shelter Scotland or the Housing Rights Service respectively.

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What is a mortgage?

A mortgage is a loan that is 'secured on' your home. This means that the lender takes an interest in your home. If you fail to make the payments under the loan, then the lender can make you move out, and sell your home.

Reasons for a mortgage

There are many reasons for a mortgage. The most common reason is that you want to buy a home. You can afford to pay part of the price, but you have to borrow the rest from a bank or building society, and you can do this by a mortgage. A 'remortgage' can be when you pay off one mortgage and take another one, eg to get a better rate of interest, or when you take out a second mortgage, usually to borrow money.

You may need money, eg for house repairs or to buy a car. Often a mortgage is the cheapest way for a homeowner to borrow money. Remember though that it is cheaper to use savings, and the lender will be making money at your expense.

Types of mortgage

A **capital repayment mortgage** is a loan for a fixed period of years, typically ending at your expected retirement date. You must pay a certain amount of money each month. At first, most of the money paid is used to pay the interest on the

loan, and a small amount is used to pay off part of the loan. As the loan is gradually reduced, the amount of your payment used to pay interest gets smaller, and so the loan is paid off at an increasing rate. At the end of the loan period, provided you have made all of the payments, the loan will have been paid in full.

An **endowment mortgage** has two parts, a mortgage and an investment usually called an endowment policy. The mortgage is a loan for a period of years. Typically the endowment is a life assurance policy, but it may be another financial product such as a pension. Each month, you make a payment. Part of this pays the interest on the loan and the rest is paid into the endowment. The endowment is invested by a life assurance or other company in stocks, shares and other investments. At the end of the mortgage, the endowment 'matures' (pays out). If it has performed well, there will be enough money both to pay off the loan and to pay you some money. If the endowment has performed badly, there may not be enough money to pay the loan in full, and you will have to pay the balance.

The interest on capital repayment and endowment mortgages can be fixed or variable. A fixed rate lasts for a period of years, eg two years, and after that you may be able to get another fixed rate. Variable interest

will rise or fall as the lender's interest rates change. A flexible mortgage allows you to vary your payments, within limits.

Under an **interest-only** mortgage, you only pay interest until the end of the loan, when you must pay the whole amount in full. This is usually only available for relatively short periods or for business loans.

Equity release (sometimes known as capital release, home reversion or lifetime mortgage) is a range of products that enable a person with spare equity in their home to borrow money. They are often intended for older people. Typically, after the loan is made, either low or no payments are due until after the borrower's death when the home must be sold and the loan repaid in full. Some of these agreements are mortgages, but some are a form of leasing. While equity release may be suitable for some people, the cost of borrowing can be very high indeed, and you should get advice before taking out this kind of loan.

Shared ownership mortgages are linked to a shared ownership agreement. There are various kinds of agreement, but typically the home is owned in part by a housing association and partly by the homeowner, who pays the

housing association rent for its share and makes mortgage payments for the rest. If the homeowner's circumstances improve, s/he can buy more of the home from the housing association ('staircasing up'). Shared ownership mortgages are usually capital repayment mortgages.

Islamic mortgages are products designed to comply with Shari'ah (Islamic religious law). The most common forms are Ijara and Murabaha. Ijara is a leasing agreement where you arrange for the bank to buy a home, and you then make payments to the bank as rent and instalments of the purchase price. When all instalments have been paid, the home is transferred to you. Murabaha is a form of mortgage transaction where the bank buys the home and sells it to you at a higher price to include the bank's profit, again to be paid by instalments. The bank retains a mortgage until all instalments have been paid.

A **second mortgage or secured loan** is a mortgage for something other than home purchase. You usually make a monthly payment, which pays interest and part of the loan. Interest rates and charges are often much higher than other mortgages. Some lenders are happy to lend to high-risk borrowers, knowing that they can sell your home to repay the loan.

Always consider other options like using savings or increasing your main mortgage. You should only take a loan where you know that you can afford the repayments, and make sure you understand interest rates and other charges.

Business loans and overdrafts

are often linked with a mortgage on a home. Remember your home is at risk even if you are not the borrower, and get advice before agreeing to any mortgage.

A **family arrangement** may involve a mortgage. You should get advice from a solicitor or conveyancer to set up the mortgage.

Arranging a mortgage

Mortgages can be arranged at high street branches of banks and building societies, through brokers and agencies, and on the internet. It is worth comparing the different mortgages available. You should consider:

- interest rates
- how easy it is to transfer to another product with the same lender, or change lender, and what charges there might be
- can you increase payments if your position improves? or decrease them if problems arise?
- your own research, eg ask at branches of banks or building

societies, check financial pages in newspapers and look on the internet

- brokers and agencies will charge you an arrangement fee. For difficult loans, for instance where you can only afford a very small deposit or have a poor credit history, this fee can be justified, but if your mortgage is straightforward, you could arrange it yourself
- Islamic mortgages are available from a small number of banks.

Insurance policies

There are a number of policies to consider when you take out a mortgage:

- You must have house insurance. If you own a flat, this is probably arranged by the freeholder, and if you own a house, it is arranged by you. Some lenders include insurance as part of the mortgage package, and some lenders will sell you their own insurance if you want it.
- An endowment mortgage includes life assurance, but if you have a repayment or interest only mortgage you may need to pay for life assurance. At its cheapest, this will pay off the loan if you should die, but a more expensive policy can be an investment.
- A payment protection plan is an insurance policy to meet your mortgage payments if you fall ill or

- lose your job. Check carefully what you are being offered and what it covers. Your plan is unlikely to cover existing medical conditions or voluntary redundancy, and may only pay sums due for a limited period and not the whole loan.
- Mortgage indemnity insurance is to protect the lender and not you, in case you fail to make the payments due. If the insurer pays out, the insurer can then make you pay. You may have to pay for a policy if the mortgage is more than 80 per cent of the value of your home.
 - Who is your mortgage with? A well-known bank or building society may help you as long as it will be paid in the long term, but a short-term lender is likely to be less sympathetic.
 - What resources can you draw on? Can you claim on insurance? Do you have a redundancy payment, savings or other assets? Can you claim welfare benefits or a tax refund?
 - What savings can you make?
 - What is the property market like? Are homes selling well, or is the market difficult?
 - Are you using your home fully, or could you live somewhere smaller or in a cheaper area?

Mortgage arrears

If you fail to make a mortgage payment when it is due, the missed payment is said to be 'mortgage arrears'. Mortgage arrears can lead to you losing your home and losing a lot of money. However, if you think things through, get advice and act promptly, you may save your home, and save a lot of money and stress.

Working out your options

First, you need to ask these questions:

- Are your difficulties long- or short-term? If you face redundancy or illness, will you be able to return to work and, if so, when?
- Can you take temporary or part-time work to ease financial pressure?

Mortgage problems are often made worse by having other debts. If you have other debts, get advice about dealing with all your creditors.

You can get advice from one of the organisations mentioned in the introduction to this guide to help you gather information, and then decide what you should do.

Making mortgage payments

Your mortgage payment is very important. If you get into mortgage arrears, your home is at risk and it can be difficult to clear the arrears. There are things that your lender can do to help you, and your lender is more likely to help if you explain your

problems before any payments have been missed. If you cannot pay all of your mortgage payment, pay as much as you can.

If you have a large sum available, like a redundancy payment, it may be tempting to pay off some, or all, of your mortgage. This may not be sensible, because you will need money for any remaining mortgage payments, household bills, and perhaps for retraining or setting up a new business. Also, you may have to pay a penalty if you pay your mortgage early. So always get advice before making a large payment.

Talking to your lender

It is important to talk to your lender if you have arrears or have financial problems that could lead to arrears. You can telephone first, but a meeting at a local branch of your lender or a more detailed telephone discussion may be necessary at a later date. The first person you speak to is not necessarily a person who has the knowledge or authority to help you. You may need a friend or adviser to help you reach the right person and to explain your situation. You should be prepared to answer questions about your circumstances, for example:

- details of your income, outgoings, debts and savings
- what steps you have taken to increase your income and to make savings

- what changes you would like to make to the mortgage, and what payments you will be able to make.

Write this information down. Make sure you are both honest and realistic. It will not help you if you say that you can make payments that are more than you can afford.

If you fail to contact your lender, you can expect to receive reminder letters and for the lender to begin legal action to recover the arrears, and the costs will be charged to you.

Lenders can be helpful, and should be able to provide projections of the costs of various options open to you, so that you can compare them. But remember that the lender is running a business and may not be able to advise you on the best course of action. You can get advice from the organisations referred to in the introduction to this guide.

Easy steps

Some minor changes can be achieved reasonably easily:

- There may be changes allowed by your mortgage. For example, if you have a flexible mortgage, you may be able to make reduced payments for a while or switch to a different interest rate. You may be able to change your payment date from early in the month to later in the month, which may help you budget if you move the mortgage payment

- date to shortly after your pay day.
- Your lender may have a more suitable mortgage. You may need a flexible mortgage if your income fluctuates, or a fixed rate if you are on a fixed income. You may have to pay a fee for a new mortgage, and sometimes a penalty for bringing the old mortgage to an end, so consider whether a change is worthwhile. You could change an endowment mortgage to a repayment mortgage. This can reduce the cost of the mortgage, but some of the value of the endowment may be lost on surrender, so get advice first.
 - Dealing with any errors. It is best to mention errors on your account as early as possible.
 - You can review insurance and other policies, to see if there are any you can cancel. Discuss these with your lender before cancelling.
 - If you believe you were badly advised when you took out a mortgage (eg if you were pressed into an inappropriate endowment policy), you may be able to make a misselling claim. Further information is available from the Financial Services Authority.
- only, or to pay reduced amounts of capital. The amount of your monthly payment will be reduced, especially if you have had a mortgage for many years. You will have to catch up later, but this may be useful if you have a temporary payment problem.
- Allowing you to pay less or no interest for a short period. You will have to catch up, and it is only likely to be agreed for a month or two at most. Lenders are reluctant to allow you to pay less interest, even for a short period.
 - Allowing you to extend the mortgage term, which will reduce your monthly payment by spreading the capital payments over more years. This may be sensible if your mortgage ends before your expected retirement age.
 - Allowing you to pay your arrears by instalments over a few months. If you need more time, the lender may want to capitalise your arrears (see below).
 - Adding the arrears to the mortgage debt ('capitalising the arrears') means that you will pay the arrears over the whole of the mortgage term and not immediately. You will have to pay interest on the capitalised arrears.

Cutting the cost of a repayment mortgage

These are steps that the lender may agree to, but does not have to:

- Allowing you to pay interest

These options will all cost you more money over the term of the mortgage. Some changes may lead to additional

charges by your lender, so you need to think carefully before using one of these options.

Cutting the cost of an endowment mortgage

Similar to those considered for a repayment mortgage, these are the steps that a lender may agree to, although will not have to:

- Allowing you to pay less or no interest for a short period. You will have to catch up later. Lenders are reluctant to allow you to pay less interest, but may be persuaded:
 - if it means that you can make endowment payments so that the value of the policy is protected, especially if the policy is near maturity, or you or another policy holder are suffering from a life-threatening illness
 - if your problems are short-term ones
 - if you are trying to sell your home.
- Allowing you to extend the mortgage term, which will reduce your endowment payments (the endowment policy will also need to be extended). This may be sensible where your mortgage ends before your expected retirement age.
- Allowing you to pay your arrears by instalments over a few months. If you need more time, the lender may want to capitalise your arrears (see below).

- Adding the arrears to the mortgage debt ('capitalising the arrears') means that you will pay the arrears over the whole of the mortgage term and not immediately. You will have to pay interest on the capitalised arrears.

These options will all cost you more money over the term of the mortgage. Some changes may lead to additional charges by your lender, you therefore need to think carefully before using one of these options.

And, these are steps that the life assurance company may agree to, but does not have to:

- You may be able to change to a cheaper endowment policy, or to change to an endowment policy over a longer period, if the mortgage term is also extended. The benefits of the endowment policy may be reduced, so you may lose money and may be at greater risk of a shortfall at the end of the term, and you may also lose money in making the transfer, so get financial advice first.
- To allow you not to pay endowment premiums for a period, without cancelling the policy. This is more likely when you have been paying for some years, and you will usually have to catch up on the premiums you have missed.

Your lender may agree to **change your mortgage from an endowment mortgage to a repayment mortgage**. As long as you have been paying the endowment for some time (usually about two years), it will have a surrender value, which can be used to pay arrears or pay off part of the loan. Often the surrender value is a reduction in value of the endowment, so you might sell to one of the companies that specialise in buying endowments at a higher price than the surrender value. Repayment mortgages often provide lower costs and greater flexibility, but you will probably have to pay for a life assurance policy as well, and there may be additional fees in making the change. You will also lose the investment element of the endowment. The decision about whether to change is a difficult one, and you should discuss it with your lender or get advice.

If you have missed endowment premiums, the insurance company may cancel your policy. If this happens, the lender will convert your mortgage to a repayment one without your permission, and may charge you.

Shared ownership mortgages

These are repayment mortgages, so the section on 'Cutting the cost of repayment mortgages' will apply (see page 9). As well as talking to

your lender, you should speak to the housing association that owns a share in your home. The housing association may be willing to buy part of your share in your home (a process known as 'staircasing down'). Your mortgage payment would be reduced, but your rent would be increased.

Islamic mortgages

Islamic mortgages do not have interest payments, so the options available are slightly different. The essential principles are similar to those for other mortgages:

- if you fail to pay your mortgage, your home is at risk
- talk to the bank at an early stage
- get advice.

Muslims believe there is a religious duty (as well as a legal duty) to make payments, but your lender will want to discuss your concerns at an early stage and help you meet your obligations. You can ask the lender to allow you to make reduced payments, or even miss one or more of the payments. But, you will of course have to catch up later on, and you will pay more overall.

Other options available to you

Do I have a defence?

In some circumstances, you may have a good reason not to make

payments under a mortgage, and this reason may be a legal defence if a court case is brought against you. It is not possible to list all possible defences, but here are a few examples:

- **Error** by the lender. This is rare, but does happen occasionally. Always check your records carefully, as it might be your error, or a cheque may have been lost in the post.
- **Bank charges** can sometimes be challenged. More information is available from the Office of Fair Trading.
- If you have a **consumer credit loan**, which is a loan for less than £25,000 and not for the purchase of your home or other land, you may be able to claim that it is an **extortionate credit bargain** or that certain **legal formalities** have been overlooked. The loan may be reduced as a result.
- **Duress** (you were forced to sign a mortgage) or **undue influence** (you signed a mortgage because a family member or a professional adviser talked you into it) may invalidate your mortgage, especially if you have agreed to a mortgage on your home so that someone else can get money, eg for a business.

Except in straightforward cases, get legal advice if you think you may have a

defence. If you fail to make payments, your home may be at risk, but if you do make payments, you may undermine your defence. You will probably need representation by a solicitor if your lender takes you to court.

Claiming on insurance policies

If you have a payment protection plan, check whether you can make a claim under it. For temporary unemployment, your plan may only pay interest for a limited period, but if you have a long-term illness or disability your plan may provide for payment of the whole loan. Check your insurance before you make decisions that may affect it. For example, your policy may allow you to claim if you are made redundant but not if you take voluntary redundancy. If you do not understand your policy or your lender tells you that you can't claim, take legal advice as soon as possible.

Changing your mortgage lender

If you have arrears, it will be difficult to get a new mortgage on good terms. The new company will ask detailed questions about your circumstances, and these must be answered fully and honestly. However, if you foresee a change in circumstances (eg you are planning to start a family), it may be possible to reduce your mortgage payments by getting a different mortgage from your existing lender or changing the

bank or building society that provides your mortgage. You might get a lower interest rate, a fixed rate, a longer term, or even 'cashback' when you take your mortgage. See 'Arranging a mortgage' on page 6.

Increasing your mortgage

You may need to pay a large cost, such as for major house repairs or improvements, and this may give you a cash-flow problem. It may be sensible to ask your lender to advance further money on your mortgage. Remember that it is usually cheaper to pay from savings than borrowing money, and make sure that you can afford the increased premiums.

Remortgages

You may be tempted to pay off your mortgage arrears, pay other debts and get extra money to deal with future problems by arranging a **remortgage, second mortgage** or **secured loan**. Some lenders offer mortgages that are unsuited to people on low incomes and should be avoided. Advertising can sometimes be misleading, sometimes representing that the lender will provide impartial advice, when it will not. There may be high interest rates, large arrangement fees, and a short period to pay off the loan. If you fail to pay what is due, your home is at risk. In short, you could easily make your position

worse, so you should always get advice before trying to borrow your way out of difficulty.

Can I rent out a room, or my whole home?

One way of increasing your income is to let out a spare room in your home, or even by letting out your whole home. Your mortgage may prohibit letting, or you may need the permission of the lender, so check that first. If you live in a flat, you need to check what your lease says as well. Letting a room (having a lodger) is usually permitted, but letting your whole home will usually require permission first.

Rent is taxable income, but if your gross rental income from lodgers is up to £4,250 per year (about £80 per week), you can claim the 'Rent a Room' exemption if you tell HM Revenue & Customs. If your rent income is higher, you can still claim the benefit of the scheme up to £4,250, but will not be able to deduct expenses relating to the letting. The Rent a Room scheme does not apply to non-residential parts, eg your garage, or to a letting where you move out. You will have to disclose your income (after deduction of costs) to the HM Revenue & Customs and pay tax. HM Revenue & Customs provides information on Rent a Room and other tax issues.

Rent income will also affect any means tested benefits, and you should get advice on your benefits if you are considering letting.

Claiming welfare benefits

If you suffer a serious financial setback such as the loss of your job, you should check what benefits you can claim, unless you have another job starting almost immediately. Even if you do not qualify for benefits, you may claim National Insurance credits while out of work, and can get advice about when you might be able to claim if you are unable to return to work.

If you are claiming Income Support (IS), you can get help towards your mortgage payments.

- You can claim for interest, but not capital payments or endowment premiums.
- Interest is paid direct to your lender.
- Your mortgage must have been used to buy your home or make essential repairs or improvements to your home. If part of your mortgage was used for something else, IS will not cover interest on that part.
- IS will only pay interest on capital of up to £100,000, but any loan to improve your home for a disabled person is not included in the £100,000. A higher figure applies if you have claimed IS continuously since 10 April 1995.

- Interest is calculated at a standard rate and not the rate you are paying, so interest may not be paid in full.
- There are restrictions on when the interest will start to be paid:
 - If you are over 60, or if you have claimed IS continuously since 2 October 1995, then interest will be payable immediately.
 - Mortgages that began before 2 October 1995, or replacing mortgages that began before that date, are 'existing housing costs'. Also, you have existing housing costs if you are:
 - a carer of a person on attendance allowance or disability living allowance
 - a prisoner on remand
 - unable to claim on insurance because your claim relates to a pre-existing condition or HIV/AIDS
 - living with children and your partner has died or abandoned the family.

No interest is paid for the first eight weeks, then half the interest will be paid for 18 weeks. Full interest is only paid from week 27. But if this does not apply:

- Your claim is for 'new housing costs'. No interest is paid until week 40. A period during which you are claiming Jobseeker's Allowance, Statutory Sick Pay or

Incapacity Benefit can be counted towards the waiting period. Also a carer or a lone parent who is unable to claim IS for a time, simply because they have savings, can count that time towards the waiting period.

- You can carry on a claim for interest without waiting again if there is a short break in claiming IS (up to 52 weeks), and some claimants can continue claiming interest for the first four weeks of a new job.
- At the time of this guide going to press, IS does not apply to payments of Islamic mortgages (but this is currently under discussion). You should get advice if you need help with an Islamic mortgage.

Mortgage rescue schemes

Some lenders have set up mortgage rescue schemes to help people with arrears to stay in their homes. The schemes have limited places on them, and they are not available in all areas. Most are run in partnership with councils and housing associations. The schemes work in different ways, but typically a housing association would buy your home and then rent it to you.

Relationship breakdown, death, incapacity and bankruptcy

When a marriage or partnership breaks down, there can be complicated legal problems about the home. If your partner dies, there can be other issues to consider about ownership, tax and other people's rights. And if you or your partner face long-term illness, particularly if residential care will be necessary or if one of you is incapable of managing your own affairs, there will be different issues again. You should get advice from one of the agencies referred to in the introduction to this guide, and inform your lender about what is happening and what your plans are.

If you become bankrupt (or where your home is jointly owned, if one of the owners becomes bankrupt), your home is at risk but you need not necessarily lose your home. You need to discuss the position with your trustee in bankruptcy. You need to have a place to live, so you may be allowed to make mortgage payments.

Deciding to sell your home

If your home is larger than you need, or it is in an expensive area, you could consider moving to a cheaper home. Remember that there are major costs in selling one home and buying another, and you may need to spend money to make your new home habitable. If you are already in

financial difficulty, it may be difficult for you to arrange a new mortgage. Downsizing may be appropriate if, for example, you could afford a smaller house without a mortgage or your earnings have reduced but you can still meet the payments on a smaller mortgage.

You may decide that you will have to sell your home even though you cannot afford another one. You need to think carefully about where you will live. See 'Can I apply as homeless?' on page 20. Selling your home may be appropriate if you are happy about finding a flat to rent privately, or you can stay with family or friends.

Negative equity

If the money from selling your home is not enough to pay sale costs (estate agent and solicitor) and the full amount of all mortgage loans, then you have 'negative equity'. You can only sell with the permission of your mortgage lender. You need to show that it is in the interest of the lender to allow the sale, which may not be possible if the lender believes that the property market will improve. If your lender is being unreasonable, you may force a sale by going to court, but get legal advice first.

If your home is sold with negative equity, the lender can still expect you to pay the balance of the loan, and can continue adding interest. If you do not pay, the lender could take you

to court or make you bankrupt. If you can afford to pay part but not all, the lender may accept a payment 'in full and final satisfaction' of the debt. You should get advice from a solicitor, insolvency practitioner or one of the advice agencies mentioned in this guide, to make sure that the agreement is final.

Sometimes, the lender seems to forget about you for months or years, and then contacts you about your debt. If the lender leaves it for six years or more, the claim against you may be time barred, as long as you have not admitted the debt. So, if your lender contacts you after many years of doing nothing, you should take legal advice before even replying to the letter. You may now owe nothing at all.

Should I hand in the keys?

It is usually inadvisable to hand your keys to the lender, unless asked to do so. It does not bring the mortgage to an end, you can still be taken to court for missed payments, and the interest continues to run. The mortgage will not come to an end until the home is sold. Lenders must get the market price when they sell, but usually the home will sell more quickly and get a better price if you do it. The other reason not to hand in the keys is that you have to find another place to live, and the council may not be willing to house you if you have made yourself homeless.

If your lender asks you to hand in the keys or move out, this is likely to be part of the possession process. You should get advice on what to do. It might be sensible to move out if you know the home must be sold and the lender has a specific sale planned.

My lender is taking legal action

Your lender may start a court case against you. This may be for money you owe, or it may be for possession of your home. The lender can't force you to leave your home except by getting a court order. However, if you move out of your home, or if you have a mortgage on other land (eg business premises), the lender may take possession without a court order, and may change the locks.

You will receive a claim form from the court, usually the local county court, which will set out the claim and what the lender wants. If it is a possession case, there will be a date and place for the first court hearing.

The claim form is important. Get legal advice unless you can pay the arrears in full. Always go to the hearing unless your adviser tells you not to, or if an adjournment (a change of date) has been agreed by the lender.

The claim form does not necessarily mean that you will lose your home. There is still time to speak to the lender, and still many options

to consider. Remember that most lenders would prefer your continued custom than your home. They are in the business of lending money.

Can I get legal aid?

If you decide to see a solicitor, you may qualify for legal aid. Legal aid means that the Government pays your legal costs, although you may have to make a contribution. It is not necessarily free: in some circumstances it is possible that you will have to pay your costs from the sale proceeds when you sell your home, although this may be in many years' time. You should bear in mind that many solicitors do not offer legal aid, so ask before you arrange an appointment. There is a 'means test', and you will qualify if you are on Income Support or you have a low income.

If you do not qualify for legal aid, a solicitor may be willing to do a first interview with you for a fixed fee, but following that, the fees may get expensive. If there is a duty solicitor at court, you will not have to pay.

Costs

Most mortgages allow the lender to charge you any costs of enforcing the mortgage against you. These costs will be added to the amount of the mortgage. If the lender takes you to court, the costs soon run into hundreds of pounds. If you fight the

case, the costs may be thousands or tens of thousands of pounds. This is one reason that it is essential to get legal advice if you are fighting a mortgage case. If you take steps that later prove to be wrong, you could add to your debts and to your problems.

Sometimes the lender makes mistakes during a court case. If this happens, and especially if the case is dismissed or adjourned as a result, you can ask the judge to order the lender not to charge you for the wasted costs. But if the lender brings a case against you and you then pay the arrears, you must pay the costs even if you think that the court case was unnecessary.

What will happen at court?

When you arrive at court, you need to find out which room your case will be heard in, and give your name to the court staff so that they will tell you when the judge is ready. There are often a lot of cases listed at the same time, so you may have to wait. When the judge is ready, you will be shown into a room. This may be a court room, but often it is a smaller room or office. Your hearing will be private; and there will usually only be you, your solicitor or adviser (if you have one), the lender's solicitor or representative, and the judge. If you want a friend to be present and to help you, the judge can allow this, but usually you will be expected to speak for yourself unless

you have a solicitor. If there is a duty solicitor, s/he may speak for you.

The lender's solicitor or representative will speak first, and will explain what the lender wants to achieve. Then it is your turn. You should expect to justify what you say, and if you have made a recent payment or your circumstances have improved recently, you should make sure you have evidence, eg receipt for payment, job offer etc. It is not necessary for you to use formal words, but it is usual to address the judge as 'Sir' or 'Madam'. The judge may ask questions and read the paperwork.

The judge will then decide what will happen next. There is a range of possibilities, of which the most likely are:

- **dismissal**, where the arrears have been paid
- procedural **adjournment**, where for example the lender has got the procedure wrong for example, or where you need time to get legal advice. Be prepared to explain why you have not yet got advice, and when your appointment is
- **adjournment** to give you time to pay the arrears over a reasonable period
- **case management directions**, if you have a defence (see 'Do I have a defence?' on page 11). The directions tell you and the lender what you must do to get the case ready for a trial.

- **time order** can be made by the court if you have a consumer credit loan, which is a loan for less than £25,000 and not for the purchase of your home or other land. The court can change the interest rate or lengthen the time for you to make payments
- **suspended possession order.** This is a possession order but if you keep to the order, usually by making payments required by the order, then you will not have to leave your home. If you break the order, the lender can evict you. You can ask the judge to order that you can't be evicted without another court hearing taking place, but if the judge refuses then you can be evicted without another hearing
- **outright possession order.** This will give you a date by which you must leave your home
- a **money judgment.** The lender does not need a money judgment when a possession order has been made, and can take what is due from the proceeds of sale. A judgment may be made if the arrears have been reduced to a small amount, or where the amount of the arrears has been disputed.

Generally, the judge will want to adjourn or make a suspended possession order, provided that you can show that you will pay the arrears within a reasonable period, which

may be over several months or even years. You will need to show not only that you are willing, but that you will be able to pay. Remember that you need to pay the future payments as well, and meet other debts and ordinary household expenditure. It will help if you have a list of your income, outgoings, debts and savings. Be prepared to explain why your circumstances have improved, or are likely to improve, and the changes that you have made or can make to ensure that payments are made in the future.

Can I do anything after a possession order has been made?

- You can **appeal**, if the court has got the law wrong. You should get legal advice before appealing, as it might not be the best course of action.
- You can apply for the possession order to be **set aside**, if you failed to attend the hearing, you had a good reason for failing to attend, and you have good reasons why a possession order should not have been made.
- You can apply for the possession order to be **varied or suspended**, if there has been a change in your circumstances that justify the change. For example, you may have cleared a large part of the arrears, or got a new job so you can afford to clear the arrears.

- You can apply for a **stay of the possession warrant**. This prevents the bailiffs evicting you for a period while you appeal, apply to set aside, or apply to vary or suspend.

All of these applications can be made over the counter at the court. You should get advice from a solicitor or one of the organisations referred to in the introduction to this guide.

Bailiffs' warrants and bailiffs' notices

If an outright possession order is made against you, or if you breach a suspended possession order, the lender can ask the court bailiffs to evict you. The bailiffs will send you a letter about 14 days before they are coming. It is best to leave with your belongings. If you fail to leave, the bailiffs can remove you, using force if necessary.

Sale by the lender after repossession

The lender can sell your home. Usually there is nothing you can do, but if you can afford to repay the whole loan including all arrears and costs, then the lender may agree to allow you to have your home back. If the lender intends to sell your home for less than it is worth, you may be able to get a court order to stop this happening, but you should get legal advice first.

After your home is sold, the lender uses the money received to pay sale costs and all of the mortgages on it. If there is any money left, this should be paid to you. If there is not enough money to pay everything, then you can be made to pay the balance. See 'Negative equity' on page 16.

Can I apply as homeless?

You can ask your local council's housing department for help if you have nowhere to stay or are likely to lose your home in the next 28 days. The council is legally required to give you advice and help you find a place to live. Depending on your situation, you might also be entitled to accommodation. You can get more information from an advice centre or, for a detailed explanation, pick up the Shelter guide *Homeless? Read this*.

Organisations

To contact Shelter

You can call our free housing advice helpline on 0808 800 4444. The helpline is open from 8am to midnight, seven days a week, and we can provide minicom or interpreting services if you need them. You can also visit our website for more information about your legal rights and contact details of local advice centres: www.shelter.org.uk/adviceonline

Other organisations that may be able to help you:

Advice UK

12th Floor, New London Bridge House, 25 London Bridge Street, London SE1 9SG
020 7407 4070
www.adviceuk.org.uk

Citizens Advice

Myddleton House, 115–123 Pentonville Road, London N1 9LZ
020 7833 2181
www.citizensadvice.org.uk

Community Legal Service

- to find a solicitor:
CLS Directory at www.clsdirect.org.uk
- to get free initial advice:
Helpline on 0845 345 4 345

Council of Mortgage Lenders

3 Savile Row, London W1S 3PB
020 7437 0075
www.cml.org.uk

Financial Services Authority

25 The North Colonnade,
Canary Wharf, London E14 5HS
020 7066 1000
Consumer Helpline 0845 606 1234
www.fsa.gov.uk

Housing Rights Service (Northern Ireland)

4th Floor, Middleton Buildings,
10–12 High Street, Belfast BT1 2BA
028 9024 5640
www.housingrights.org.uk

HM Revenue & Customs

Local advice offices in many major towns, and advice available regionally by post and telephone see website for details: www.hmrc.gov.uk

Law Centres Federation

Duchess House, 18–19 Warren Street, London W1T 5LR
020 7387 8570
www.lawcentres.org.uk

Office of Fair Trading

The OFT is unable to advise individuals but has a lot of useful information, (including about bank charges), on its website: www.oft.gov.uk/Consumer/Money

Shelter Cymru

25 Walter Road, Swansea SA1 5NN

01792 469400

www.sheltercymru.org.uk

Shelter Scotland

Scotiabank House, 6 South Charlotte

Street, Edinburgh EH2 4AW

0131 473 7170

www.shelter.org.uk

Bad housing wrecks lives

We are the fourth richest country in the world, and yet millions of people in Britain wake up every day in housing that is run-down, overcrowded, or dangerous. Many others have lost their home altogether. Bad housing robs us of security, health, and a fair chance in life.

Shelter believes everyone should have a home.

We help more than 170,000 people a year fight for their rights, get back on their feet, and find and keep a home. We also tackle the root causes of bad housing by campaigning for new laws, policies, and solutions.

Our website gets more than 100,000 visits a month; visit www.shelter.org.uk to join our campaign, find housing advice, or make a donation.

We need your help to continue our work. Please support us.

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